

UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

JAMAL DAMON HENDRIX,

Case No. 3:18-cv-00393-RCJ-WGC

**Plaintiff,**

## ORDER

v.

JOSHUA BARFIELD et al.,

## Defendants.

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on October 16, 2019. (ECF No. 4). The screening order imposed a 90-day stay, and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 4, 10). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 14).

Following the entry of the Court's screening order, Plaintiff filed a motion for leave to file an amended complaint within 30 days. (ECF No. 6.) The Office of the Attorney General has filed a response indicating that it does not oppose Plaintiff's motion to file an amended complaint. (ECF No. 12.) Accordingly, the Court grants Plaintiff's motion for leave to file an amended complaint within 30 days.

If Plaintiff chooses to file an amended complaint, he is advised that an amended complaint supersedes (replaces) the original complaint and, thus, the amended complaint must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original complaint is irrelevant; an amended pleading supersedes the original”); see also

*Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required to reallege such claims in a subsequent amended complaint to preserve them for appeal). Plaintiff's amended complaint must contain all claims, defendants, and factual allegations that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff should file the amended complaint on this Court's approved prisoner civil rights form, and it must be entitled "First Amended Complaint."

For the foregoing reasons, **IT IS ORDERED** that:

1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is  
**GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In  
the event that this action is dismissed, the full filing fee must still be paid pursuant to 28  
U.S.C. § 1915(b)(2).

2. The movant herein is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of security therefor. This order granting leave to proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at government expense.

3. Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the preceding month's deposits to Plaintiff's account (**Jamal Damon Hendrix, #1083418**), in the months that the account exceeds \$10.00, until the full \$350.00 filing fee has been paid for this action. The Clerk of the Court shall **SEND** a copy of this order to the Finance Division of the Clerk's Office. The Clerk of the Court shall also **SEND** a copy of this order to the attention of the Chief of Inmate Services for the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

4. The Clerk of the Court shall electronically **SERVE** a copy of this order and a copy of Plaintiff's complaint (ECF No. 5) on the Office of the Attorney General of the State of Nevada by adding the Attorney General of the State of Nevada to the docket sheet. This does not indicate acceptance of service.

1       5. Plaintiff's motion for leave to file an amended complaint (ECF No. 6) is  
2 granted. If Plaintiff chooses to file an amended complaint, Plaintiff will file the amended  
3 complaint within thirty (30) days from the date of entry of this order.

4       6. Service must be perfected within ninety (90) days from the date of this order  
5 pursuant to Fed. R. Civ. P. 4(m).

6       7. Subject to the findings of the screening order (ECF No. 4), within twenty-  
7 one (21) days of the date of entry of this order, the Attorney General's Office shall file a  
8 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it  
9 accepts service; (b) the names of the defendants for whom it does not accept service,  
10 and (c) the names of the defendants for whom it is filing the last-known-address  
11 information under seal. As to any of the named defendants for whom the Attorney  
12 General's Office cannot accept service, the Office shall file, under seal, but shall not serve  
13 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such  
14 information. If the last known address of the defendant(s) is a post office box, the Attorney  
15 General's Office shall attempt to obtain and provide the last known physical address(es).

16       8. If service cannot be accepted for any of the named defendant(s), Plaintiff  
17 shall file a motion identifying the unserved defendant(s), requesting issuance of a  
18 summons, and specifying a full name and address for the defendant(s). For the  
19 defendant(s) as to which the Attorney General has not provided last-known-address  
20 information, Plaintiff shall provide the full name and address for the defendant(s).

21       9. If the Attorney General accepts service of process for any named  
22 defendant(s), such defendant(s) shall file and serve an answer or other response to the  
23 complaint (ECF No. 5) within sixty (60) days from the date of this order.

24       10. Plaintiff shall serve upon defendant(s) or, if an appearance has been  
25 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other  
26 document submitted for consideration by the Court. Plaintiff shall include with the original  
27 document submitted for filing a certificate stating the date that a true and correct copy of  
28 the document was mailed or electronically filed to the defendants or counsel for the

1 defendants. If counsel has entered a notice of appearance, Plaintiff shall direct service  
2 to the individual attorney named in the notice of appearance, at the physical or electronic  
3 address stated therein. The Court may disregard any document received by a district  
4 judge or magistrate judge which has not been filed with the Clerk, and any document  
5 received by a district judge, magistrate judge, or the Clerk which fails to include a  
6 certificate showing proper service.

7 || 11. This case is no longer stayed.

DATED THIS 13th day of December 2019.

William G. Cobb  
**UNITED STATES MAGISTRATE JUDGE**